

Message

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**Sent:** 12/7/2018 6:09:45 PM  
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**Subject:** Attorney Client Communication - Coal Contract Research  
**Attachments:** otter\_tail-ar2017\_0058.pdf

Hi All (sending this to those of us on the call yesterday, with copies to Andrea and Brian as noted)

After our call yesterday with the State of North Dakota,

**Ex. 5 Attorney Client (AC)**

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The lignite sales agreement (LSA), which appears to be what we've been looking at and discussed with the State, is a unique type of coal sales agreement because as explained in Otter Tail's 2017 Annual Report (Otter Tail is one of the part owners of Coyote Station), the LSA between Coyote Station and Coyote Creek Mining is considered a "Variable Interest Entity" (VIE):

CCMC was formed for the purpose of mining coal to meet the coal fuel supply requirements of Coyote Station from May 2016 through December 2040 and based on the terms of the LSA, is considered a variable interest entity (VIE) due to the transfer of all operating and economic risk to the Coyote Station owners, as the agreement is structured so that the price of the coal would cover all costs of operations as well as future reclamation costs.

(excerpt from Otter Tail's Annual Report attached to this email).

So, while the State officials on the call suggested yesterday that the mine's permit held the mine accountable for any/all CAA violations at the mine, and that's the entity the State would issue a NOV to,

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So what is a VIE? **Ex. 5 Attorney Client (AC)** A VIE is a term used by the U.S. Financial Accounting Standards Board (FASB) for accounting purposes. In preparing and filing accounting statement reports, a company (like Otter Tail) needs to consolidate the VIE entities in its reports if Otter Tail is the primary beneficiary of the VIE, which is why there's the statement in its Annual Report on this topic.

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What are the criteria used to determine if an entity is a VIE? A VIE is an entity meeting set criteria as explained in detail in the FASB's codification standards, FASB Accounting Standards Codification (ASC) Topic 810: *Consolidation* and its amendments.<sup>1</sup>

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A bit more background, why do companies create VIEs? As explained in a recent journal article

The consolidation and reporting of related entities can be a complicated accounting topic, particularly for private companies that use separate legal entities to manage a diverse network of businesses and business interests. Often, these companies manage and fund a network of legal entities via a single parent company or through a small group of related entities, which this article refers to as “entities under common control” or “common control entities.”<sup>1</sup>

## Ex. 5 Attorney Client (AC)

More to come,  
Sara

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<sup>1</sup> Accounting Standards Update. No. 2009-17 (Dec. 2009), Consolidations, Improvements to Financial Reporting by Enterprises Involved with Variable Interest Entities, An Amendment of the FASB Accounting Standards Codification™, Financial Accounting Standards Board of the Financial Accounting Foundation (Topic 810) [https://fasb.org/jsp/FASB/Document\\_C/DocumentPage?cid=1176156601576&acceptedDisclaimer=true](https://fasb.org/jsp/FASB/Document_C/DocumentPage?cid=1176156601576&acceptedDisclaimer=true) ). See also, short discussion in Wikipedia [https://en.wikipedia.org/wiki/Variable\\_interest\\_entity#cite\\_note-ey-1](https://en.wikipedia.org/wiki/Variable_interest_entity#cite_note-ey-1); and recent article “Common Control Entities and Consolidation of Variable Interest Entities”, Richard C. Jones, The CPA Journal (Aug., 2018) <https://www.cpajournal.com/2018/08/15/common-control-entities-and-consolidation-of-variable-interest-entities/>.